

Sun Inn, Inc. d/b/a San Antonio Inn and Deborah Ousley. Case 14-CA-14431

May 18, 1982

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On May 5, 1981,¹ the National Labor Relations Board issued a Decision and Order² in the above-entitled proceeding, in which the Board granted the General Counsel's Motion for Summary Judgment and found, *inter alia*, that Respondent violated Section 8(a)(1) of the Act by discharging employee Deborah Ousley because she engaged in protected concerted activities. The Board ordered, *inter alia*, that Respondent make whole Deborah Ousley for any loss of pay she may have suffered by reason of the discrimination practiced against her. On October 23, the United States Court of Appeals for the Eighth Circuit entered its judgment enforcing in full the Board's Order, including its backpay provisions. A controversy having arisen over the amount of backpay due under the terms of the Board's Order as enforced by the court, the Regional Director for Region 14, on November 13, issued and duly served³ on Respondent a backpay specification and notice of hearing, setting forth certain allegations with respect to the amount of backpay due to Deborah Ousley under the Board's Order, and notifying Respondent that it must file a timely answer pursuant to the Board's Rules and Regulations, Series 8, as amended. Respondent failed to file a timely answer to the specification.

Thereafter, on December 21, counsel for the General Counsel filed with the National Labor Relations Board a Motion for Summary Judgment, with exhibits attached. On December 30, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment

should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides in pertinent part:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto

* * * * *

(c) . . . If the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification, issued and served on Respondent on or about November 13, specifically states that Respondent shall, within 15 days from the date of service, file an answer to the specification with the Regional Director for Region 14. The specification further states that, to the extent that such answer fails to deny allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.

Respondent has failed to respond to the Notice To Show Cause and therefore the allegations of the General Counsel's motion stand uncontroverted. Since Respondent has not filed an answer to the specification and has not offered any explanation for its failure to do so, the allegations of the specification, in accordance with the Rules set forth above, are deemed to be admitted as true and are so found by the Board.

Accordingly, on the basis of the allegations of the backpay specification, the Board finds the facts as set forth therein to be true, and concludes that the net backpay due to Deborah Ousley is as stated in the computations of the specification. Therefore, the Board hereinafter orders that payment be made by Respondent to Deborah Ousley.

¹ Unless otherwise specified, all dates refer to 1981.

² 255 NLRB 1321.

³ The General Counsel submits that, on November 13, a copy of the backpay specification and notice of hearing was sent by certified mail to Respondent's place of business. On December 2, it was returned marked "unclaimed." Subsequently, personal service of the backpay specification and notice of hearing was made on December 9 on Respondent's clerk at Respondent's place of business. On December 10, counsel for the General Counsel sent a letter by regular mail to Respondent, which included a copy of the backpay specification and notice of hearing. The letter advised Respondent that it was required by the Board's Rules and Regulations to file an answer within 15 days from the date of the specification, and that if such an answer were not filed the allegations of the specification would be deemed to be admitted as true. The letter further advised that, unless Respondent filed an answer by December 16, counsel for the General Counsel would file a Motion for Summary Judgment with the Board.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Sun Inn, Inc., d/b/a San Antonio Inn, Hazelwood, Missouri, its officers, agents, successors, and assigns, shall make whole Deborah Ousley by paying to her the amount of \$1,234.48, plus interest there-

on to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977),⁴ until payment of all backpay is made, less tax withholdings required by Federal and state laws.

⁴ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.